

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT Application of:	Confirmation No.:	3143
Colin Cook et al.	Attorney Docket:	2540-0702
Appl. S.N.: 10/792,284	Group Art Unit:	2629
Filing Date: 03/04/2004	Examiner:	Sitta, Grant
Title: Image perfection for virtual presence architecture (VPA)	Date:	January 13, 2011

APPEAL BRIEF

Hon. Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated April 14, 2010, in support of its appeal, the assignee requests any extension of time needed to timely submit this Appeal Brief and respectfully requests entry of this Appeal Brief in compliance with 37 C.F.R. 41.37 including sections set forth in the order specified in 37 C.F.R. 41.37(c)(1).

(i) Real Party in Interest

As evidenced by the assignment recorded at reel 015518/frame 0620, the real party in interest for this appeal is Avocent Utah which is Division of Avocent which is now a wholly-owned subsidiary of Emerson Electric Company.

(ii) Related Appeals and Interferences

No prior and pending appeals, interferences or judicial proceedings are known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii) Status of claims. A statement of the status of all the claims in the proceeding is as follows:

Rejected: claims 1-5,

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allowed or confirmed: none,  
withdrawn: none,  
objected to: none,  
canceled: claims 6-16.

The claims that are being appealed are: claims 1-5.

(iv) Status of amendments

There are no amendments which have been filed subsequent to final rejection. Thus, all amendments have been entered.

(v) Summary of claimed subject matter

As shown in Figures 2 and 3, a Virtual Presence Server (VPS) 204 and a Virtual Presence Client (VPC) 208 are connected to each other using a network 206, such as an IP network or the Internet. By connecting the Virtual Presence Server (VPS) 204 to inputs and outputs of a host computer 202, and by connecting the Virtual Presence Client (VPC) 208 to user input/output devices (e.g., display 210, mouse 214 and keyboard 212), a user operating the user input/output devices can interact with and control the host computer 202 and see the results on the display 210. However, because the host computer 202 can be operating its video output at a number of possible different resolutions, the Virtual Presence Server (VPS) 204 is configured to detect what resolution is being used, if possible, and if the VPS cannot determine the proper resolution, it must attempt to establish a default behavior that it can use to try to handle the video. Moreover, during operation of the host computer 202, the screen resolution can change, and the VPS 204 is configured to recheck the video parameters.

Paragraph [0038] of the specification states:

In one embodiment of the present invention, on each new screen resolution that is received by the VPS, the VPS adjusts the borders of the screen. It performs this by setting the capture engine to move the screen down and to the right. Then it examines the memory to search for the black borders. If no borders are found that

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are close to where the Video Electronics Standards Association (VESA) specification says they should be (for example, with respect to an IBM-compatible PC), then most likely there is a large amount of real black space on the screen and the VESA values are loaded.

Claim 1 describes such a process when it recites:

the method, on each new screen resolution that is received by a VPS,  
comprising:

detecting at the VPS a new screen resolution of the host computer;  
adjusting a screen border to correspond with the new screen resolution;  
identifying whether the adjusted screen border is near an expected

location;

if no black border is found near to the expected border location, discarding the adjusted screen border and loading a predetermined set of values for the screen border; and

if a black border is found near to the expected border location, using the screen resolution of the host computer detected at the VPS instead of discarding the adjusted screen border and loading a predetermined set of values for the screen border.

(vi) Grounds of rejection to be reviewed on appeal

There is a single ground for rejection on appeal: whether claims 1-5 are rendered obvious by the combination of three references: U.S. Patent Publication No. 2002/00383334 (hereinafter “the ‘334 publication”) to Kim, U.S. Patent No. 7,002,565 (hereinafter “the ‘565 patent”) to Allen et al., and U.S. Patent Publication No. 2002/0135605 (hereinafter “the ‘605 publication”).

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(vii) Argument

Claims 1-5

Claims 1-5 are rejected under 35 U.S.C. 103 as being obvious over the ‘334 publication in view of the ‘565 patent and further in view of the ‘605 publication. The Office Action asserts that the combination of the ‘334 publication and the ‘565 patent does not “expressly teach if no black border is found near to [the] expected border location, discarding the adjusted screen border and loading a predetermined set of values for the screen border.” The Office Action then cites to the ‘605 publication and asserts that the ‘605 publication teaches the element admittedly missing from the combination of the ‘334 publication and the ‘565 patent. The Office Action asserts that the ‘605 publication “teaches a display mode auto-setting method to optimize display modes” and that it “would have been obvious ... to modify [the ‘334 publication and the ‘565 patent] to include *the optimization method as taught by* [the ‘605 publication] in order to provide the best or optimal display mode among a plurality of display modes.” (Emphasis added.)

In response to the previous, non-final Office Action, the assignee pointed out that the Office Action did not allege, much less prove, that the ‘605 publication teaches performing its procedures “if no black border is found near to the expected border location” as the ‘605 publication does not check for a black border at all. In the outstanding final Office Action, the Response to Arguments, section 2, admits that such a limitation is not taught and states that the “‘605 [publication] does not check for borders at all.”

The Response to Arguments, however, now asserts that the “‘565 [patent] is being relied upon to characterize a video signal using a black border, i.e., if no black border is found near the expected borders.” (Section 2, second paragraph.) This assertion does not say what the ‘565 patent does “if no black border is found near the expected borders” and does not provide support for the claim element admittedly missing from the combination of the ‘334 publication and the ‘565 patent.

The Office Action then characterizes the rejection as being based on “what the combined teachings of the references would have suggested to those of ordinary skill in the art.” (Office

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Action, page 2, last full paragraph, and page 4, last full sentence of the last paragraph.) In the paragraph crossing pages 4 and 5, the Office Action states that the “Examiner asserts the teachings of [the ‘605 publication] would have suggested the means of comparing optimum display information of a black border and VESA, determining the optimum display information and selecting the most approximate to optimum display information.” Absent from this assertion is any *evidence* to support that any of the references teaches “if no black border is found near to the expected border location, discarding the adjusted screen border and loading a predetermined set of values for the screen border.” The Office Action simply reiterates that “it would have been obvious to one of ordinary skill in the art ... to modify [the ‘334 publication and the ‘565 patent] to include *the optimization method as taught by* [the ‘605 publication] in order to provide the best or optimal display mode among a plurality of display modes.” (Emphasis added.) This is the very issue that, in response to the same non-final rejection, the assignee said no evidence had been provided for, and for which evidence still has not been provided. Thus, the Office Action’s failure to provide *evidence* to support its conclusion shows that the claims are not rendered obvious.

Approaching the issue from the other side, the Office Action admits that the ‘334 publication and the ‘565 patent are deficient in themselves, and asserts that one of skill in the art would have used “*the optimization method as taught by*” the ‘605 publication, but then does not use “*the optimization method as taught by*” the ‘605 publication. Instead the Office Action appears to allege that one of ordinary skill in the art would have modified the method of the ‘605 publication and only used part of the method of the ‘605 patent, and not even the part that achieves the alleged optimization of the ‘605 publication. Such an assertion is tantamount to modifying the principle of operation of the ‘605 publication -- which is an indication of non-obviousness. (See MPEP 2143.01.)

As described in paragraph [0005], the ‘605 publication uses “an electrically erasable programmable read only memory (EEPROM) storing enhanced display information data (EDID) containing a model number necessary for a monitor driver of the computer system to recognize the monitor, the kind of applicable resolution, and the resolution recommended by a monitor

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vendor, etc.” Thus, there is no need to perform the checks for the black borders if the system of the ‘605 publication can read the information directly from an EEPROM. In the first full paragraph of page 5 of the Office Action, in the Response to Arguments section, the Office Action states that the above arguments are “attacking the reference (Kim) individually.” However, the assignee is attacking the *combination* by showing that the ‘605 publication (Kim) does not have the same element missing from the other references, so no reference of the combination has the asserted element. Thus, the argument is proper. In addition, it appears that the Office Action admits that there is no need for the ‘605 publication to check for the black borders. In the first full paragraph of page 5, the Office Action states “while what Applicant asserts maybe [sic; may be] true (there being no need to perform the checks for black border with EDID).” Thus, the ‘605 publication does not teach the same limitation missing from the other references of the combination.

There is also no motivation to combine the references as alleged. If the ‘605 publication can already read monitor information out of an EEPROM, then one of ordinary skill in the art would not have been motivated to combine it with the ‘334 publication which performs checks differently. In the first full paragraph of page 5, the Office Action further asserts that the ‘334 publication “fails to disclose having access to EDID but discloses various means of determining the resolution, performing the checks/optimization of [the ‘605 publication]” but asserts it “would have been obvious ... [to make the combination] with the motivation being to find an optimal display characteristic between multiple modes.” However, in light of the modification to the ‘605 publication proposed by the examiner, there is no evidence that the result would be the asserted “optimal display characteristic between multiple modes.” Moreover, the Office Action has provided no evidence about why, if the ‘605 publication is better than the combination of the ‘334 publication and the ‘565 patent, one of ordinary skill in the art would not have instead been motivated to *remove* the display circuitry of the ‘334 publication and the ‘565 patent and replace it with the EDID system of the ‘605 publication, thereby teaching away from the claimed invention.

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Thus, as the combination fails to teach all of the limitations, and as there is no motivation to combine the references as alleged, claim 1 and its dependent claims are not obvious over the proposed combination of references. Consequently, the grounds for rejection in the outstanding final Office Action should be reversed.

<b>CHARGE STATEMENT:</b> Deposit Account No. 501860, order no. <b>2540-0702</b> .	
The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 ( <u>missing or insufficiencies only</u> ) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/ Order Nos. shown above, for which purpose a <u>duplicate</u> copy of this sheet is attached.	
<b>This CHARGE STATEMENT <u>does not authorize</u> charge of the <u>issue fee</u> until/unless an issue fee transmittal sheet is filed.</b>	
CUSTOMER NUMBER <b>42624</b>	Respectfully submitted,  By: / Michael R. Casey /  _____ Michael R. Casey (Reg. No. 40,294)
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(viii). CLAIMS APPENDIX

Claim 1 (Previously Presented): A method of image improvement in a virtual presence architecture (VPA) including a host computer in communication with a virtual presence server (VPS), a remote computer in communication with a virtual presence client (VPC), the method, on each new screen resolution that is received by a VPS, comprising:

- detecting at the VPS a new screen resolution of the host computer;
- adjusting a screen border to correspond with the new screen resolution;
- identifying whether the adjusted screen border is near an expected location;
- if no black border is found near to the expected border location, discarding the adjusted screen border and loading a predetermined set of values for the screen border; and
- if a black border is found near to the expected border location, using the screen resolution of the host computer detected at the VPS instead of discarding the adjusted screen border and loading a predetermined set of values for the screen border.

Claim 2 (Original): The method of claim 1, wherein the predetermined set of values for the screen border is the Video Electronics Standards Association (VESA) set of standard values.

Claim 3 (Original): The method of claim 1, wherein the adjusting is performed by setting a capture engine to move the screen down and to the right.

Claim 4 (Previously Presented): The method of claim 1, wherein the user is prompted to manually adjust the screen border to correspond with the new screen resolution.

Claim 5 (Previously Presented): The method of claim 1, wherein the VPA automatically adjusts the screen border to correspond with the new screen resolution.



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Claims 6-16 (Canceled)

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(ix). EVIDENCE APPENDIX

No evidence under sections 1.130, 1.131 or 1.132 of 37 CFR are being relied upon in this appeal.

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(x). RELATED PROCEEDINGS APPENDIX

No related proceedings